

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2016

PRONOUNCED ON : 15.12.2016

CORAM :

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CMA.No.2310 of 2002

1.Asalambal
2.Manickam

... Appellants

Vs.

1.Rani
2.P.P.Muthu

3.United India Insurance Co., Ltd.
Branch Office, 4/23G, New Edapadi Road,
Sankari 637 301, Tiruvannamalai.

4.G.Kaliaperumal

...Respondents

PRAYER : Appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 24.09.2002 made in MCOP.No.356 of 1999 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Perambalur.

For appellant : Mr.T.R.Rajaraman

For respondents : Mr.A.A.Venkatesan for R1

Mr.K.Suryanarayanan for R3.

Service awaited for R2 & R4.

JUDGMENT

The Civil Miscellaneous Appeal is filed against the judgment and decree dated 24.09.2002 made in MCOP.No.356 of 1999 on the file of the Motor Accident Claims Tribunal, (Principal District Judge), Perambalur.

2.The appellants herein are the parents of the deceased Subramanian and the respondents 4 and 5 in the claim petition MCOP.No.356 of 1999 and the claimants in MCOP.No.72 of 1999. Aggrieved against the order made in MCOP.No.356 of 1999, the respondents 4 and 5 therein, filed the present appeal before this Court.

3.The appellants herein filed separate claim petition in MCOP.No.72 of 1999, before the Tribunal for damages and compensation for Rs.3,00,000/- the trial Court after hearing both sides, directed the respondents 1 and 2 to pay Rs.1,00,000/- with 9% interest from the date of petition. MCOP.No.356 of 1999 was filed by the wife/Rani of the deceased/Subramanian claiming compensation for Rs.5,00,000/- the trial Court after hearing both sides, directed the respondents 1 and 2 to pay Rs.1,20,000/- with 9% interest from the date of petition. Against the said order, the parents of the deceased/respondents 4 and 5 in MCOP.No.356 of 1999 preferred the present appeal before this Court.

4.The learned counsel for the appellant would mainly contend that the trial Court erroneously comes to a conclusion that the present

first respondent/Rani is wife of the deceased Subramanian, no marriage was held between the deceased Subramanian and Rani, she is not at all wife of the deceased Subramanian, the trial Court ought not to have awarded compensation to the wife/Rani and ought to have awarded compensation to the parents/appellants herein and prays to allow the appeal and to set aside order made in MCOP.No.356 of 1999.

5.The learned counsel for the third respondent/insurance company would mainly contend that the trial Court passed common judgment in both the MCOP.Nos.72 of 1999 and 356 of 1999. As per the order of the Tribunal made in both the claim petition, the insurance company is ready to obey the order of the Tribunal. Hence, the learned counsel prays for dismissal of the appeal against the insurance company.

6.The learned counsel for the first respondent/wife mainly contended that the Tribunal after appreciating the entire facts and circumstances correctly allowed the claim petition and directed the insurance company to pay a compensation to the tune of Rs.1,20,000/- along with 9% interest from the date of petition. The first respondent is the wife of the deceased/Subramanian, hence, the trial Court awarded just compensation to the first respondent who is the claimants in MCOP.No.356 of 1999, hence, there is no illegality,

infirmity and perversity in the order of the trial Court.

7. Heard the rival submissions made on both sides and perused the records.

8. Admittedly, the appellants are the parents of the deceased Subramanian, the appellants have filed separate claim petition in MCOP.No.72 of 1999. Subsequently, the wife of the deceased Subramanian filed separate claim petition in MCOP.No.356 of 1999 claiming damages against the insurance company and the owner of the offending vehicle and by impleading the parents of the deceased (i.e., R4 and R5 therein). The Tribunal pronounced common order in both the cases. The trial Court after appreciating the evidences of either side awarded Rs.50,000/- each with 9% interest to the petitioners in MCOP.No.72 of 1999, (totally Rs.1,00,000/-) and awarded Rs.1,20,000/- along with 9% interest to the wife of the deceased Subramanian in MCOP.No.356 of 1999.

9. It is admitted by both the parties that the appellants who are the respondents 4 and 5 in MCOP.No.356 of 1999 have not preferred any appeal against the order passed in MCOP.No.72 of 1999. Hence, the order made in MCOP.No.72 of 1999 has attained finality. The appellants herein filed this appeal for enhancement of compensation

in MCOP.No.356 of 1999 which is preferred by the first respondent/wife. This Court is of the view that the appellants are not entitled to claim any enhancement in the petition filed by the wife and that too without preferring any appeal against the claim petition filed by them in MCOP.No.72 of 1999.

10.The trial Court after considering the entire evidences adduced on either side comes to a proper conclusion that the first respondent is the wife of the deceased Subramanian, there is no material or evidence produced on the side of the appellants to show that Rani is not wedded wife of deceased Subramanian. Contrary to that the learned counsel for the first respondent contended that Rani after the death of Subramanian only married one Siva, because of the said second marriage, PW1 denied the marriage between Rani and deceased Subramanian. It is admitted on the side of the first respondent that after the death of Subramanian only, she married one Siva, there is no evidence produced on the side of the parents that the marriage between Siva and Rani was held before the death of Subramanian. On the side of the appellants birth certificate of one female child born on 15.09.1997 between Rani and Siva was produced as Ex.A4. It is admitted that the date of accident was on 17.03.1995, hence the arguments of the learned counsel for the first respondent

that marriage between Rani and Siva was held only after the death of Subramanian is acceptable and believable one. Ex.A4/birth certificate proves that female child was born to Rani and Siva after the death of Subramanian, that too after more than two years. In view of the above, the arguments advanced on the side of the appellants is liable to be rejected and not acceptable one.

11. This Court is of the considered view that the first respondent is wife of the deceased Subramanian and the appellants are the parents of the deceased Subramanian. The trial Court awarded Rs.50,000/- each with 9% interest from the date of petition to the appellants along with interest in the MCOP.No.72 of 1999 and Rs.1,20,000/- with 9% interest from the date of petition to the first respondent/wife is just and fair compensation, the award passed by the Tribunal does not warrant any interference by this Court.

12. In the result, the civil miscellaneous appeal stands dismissed. No costs.

15.12.2016.

Index : Yes/No
Internet : Yes/No

To

The Motor Accident Claims Tribunal, (Principal District Judge),

Perambalur.

G.CHOCKALINGAM, J.
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15.12.2016.
<http://www.judis.nic.in>